

APPENDIX E

HONORARIUM AGREEMENT

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WASHINGTON STATE FERRIES

NEW 144 – AUTO FERRIES

DESIGN - BUILD CONTRACT

HONORARIUM AGREEMENT

THIS HONORARIUM AGREEMENT (this “Agreement”) is made and entered into as of this _____, 2006, by and between the Washington State Ferries, a division of Washington State Department of Transportation (“WSF”), and _____, a _____, (“Proposer”), with reference to the following facts:

1. Proposer is one of the entities deemed pre-qualified / best qualified to submit Proposals for the New 144 – Auto Ferries Design - Build Project (the “Project”), and wishes to submit a Technical Proposal and Bid in response to the Request for Proposals for the Project (the “RFP”) issued by WSF.
2. The RFP requires each Proposer to execute and deliver an Honorarium Agreement to WSF by the date specified in the RFP, as a condition to WSF’s obligation to pay an honorarium to the Proposer.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:\

1. Services and Performance.

WSF hereby retains Proposer to prepare a responsive Technical Proposal and Bid in response to the RFP. A “responsive” Technical Proposal and Bid means a Technical Proposal and Bid submitted by a qualified Proposer, which conforms in all material respects to the requirements of the RFP, as determined by WSF, and is timely received by WSF.

Subject to the provisions of the RFP documents regarding ownership of Escrowed Bid Documents, all work performed by Proposer and its team members pursuant to this Agreement shall be considered work for hire, and the products of such work shall become the property of WSF without restriction or limitation on their use. Neither Proposer nor any of its team members shall copyright any of the material developed under this Agreement.

Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the RFP.

2. Term.

Unless otherwise provided herein, the provisions of this Agreement shall remain in full force and effect until execution of the Contract or until one year from the date of the execution of this Agreement, whichever occurs first. Services are due by the dates set forth in the RFP.

3. Compensation and Payment.

- a. Compensation payable to Proposer for the services described herein shall be in the amount of \$500,000.
- b. If WSF awards the Contract to Proposer, Proposer will not be entitled to compensation hereunder.
- c. Payment will be owing hereunder only after receipt and approval of goods and services, and will be made within forty-five (45) days after award of the Contract, or the decision not to award a contract, and after receipt of a proper invoice submitted to WSF under this paragraph 3.c. The invoice must be accompanied by a letter stating that the Proposer agrees with the terms of this agreement. Such invoice may not be submitted until one business day after the earlier to occur of (i) award of the Contract, (ii) cancellation of the procurement, or (iii) expiration of the time period for award stated in the RFP, as the same may have been extended by WSF pursuant to the terms of the RFP. WSF will advise Proposer when said Contract is executed.
- d. This Agreement involves the submission of a Technical Proposal and Bid by Proposer that must be received by the due dates set forth in the RFP and determined responsive by WSF as a condition of payment.

4. Indemnities.

- a. Subject to the limitations contained in Section 4.b. below, Proposer shall indemnify, protect and hold harmless WSF and its directors, officers, employees and contractors from, and Proposer shall defend at its own expense, all claims, costs, expenses, liabilities, demands, or suits at law or equity of, by or in favor of or awarded to any third party arising in whole or in part from the negligence or willful misconduct of Proposer or any of its agents, officers, employees, representatives or subcontractors or breach of any of Proposer's obligations under this Agreement.

- b. If any claim or suit is caused by or results from the concurrent negligence of Proposer or its agents, officers, employees or representatives, this indemnity provision shall be enforceable only to the extent of Proposer's negligence or the negligence of Proposer's agents, officers, employees, representatives or subcontractors.

5. Compliance with Laws.

- a. Proposer acknowledges that all written correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids submitted to WSF during this procurement process, excluding only the Escrowed Bid Documents, are, upon their receipt by WSF, the property of WSF and are subject to the Washington Public Records Act.
- b. Proposer shall comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to the work, and shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.
- c. Proposer covenants and agrees that it and its employees shall be bound by the standards of conduct provided in applicable laws, ordinances, rules, and regulations as they relate to work performed under this Agreement. Proposer agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.

6. Early Termination.

This Agreement may be terminated by WSF in whole or in part at any time termination is in the interest of WSF. No payment will be owing by WSF in the event of any such termination, except as provided in the RFP.

7. Assignment.

Proposer shall not assign this Agreement without WSF's prior written consent. Any assignment of this Agreement without such consent shall be null and void.

8. Miscellaneous.

Proposer and WSF agree that Proposer, its team members, and their respective employees are not agents of WSF as a result of this Agreement.

- a. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend and include the singular. All words used in any gender shall extend to and include all genders.
- b. This Agreement, together with the RFP, embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein or in the RFP, and this Agreement shall supersede all previous communications, representation, or agreements, either verbal or written, between the parties hereto.
- c. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Washington, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provisions to be invalid.
- d. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first above written.

WASHINGTON STATE FERRIES, a division of
WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION

By: _____

Name: _____

Title: _____

[insert Proposer's name]

By: _____

Name: _____

Title: _____